IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.278 of 2005.

Date of decision: October 12, 2007.

Jeet Bahadur. ……. Appellant.

Vs.

State of Himachal Pradesh. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : None.

For the respondent: Mr. V.K. Verma, Addl. Advocate General.

Surinder Singh, J (oral):

The challenge has been made by the appellant against his conviction and sentence, passed under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, **in short the Act,** for allegedly having 2.00 K.Gs of **Charas** in his possession.

The factual matrix of the case is that on 19th January, 2004, Inspector Madan Lal (PW7) was heading a police party and was on a patrolling duty and detection of crime in Manikaran area. The police party spotted the appellant coming from Manikaran side and was going towards Siundh, with a rucksack on his back. On seeing the police party, he had tried to escape, but was overpowered. On inquiry, he disclosed his identity. The said place was isolated one. No human habitation was nearby. Inspector Madan Lal suspected contraband in the possession of the appellant, therefore, he associated his own official witnesses, HC Ranjeet Singh (PW5) and

---

Whether reporters of local Papers may be allowed to see the judgment? Yes .

Constable Santosh Kumar (PW6). He gave him the option to be searched either before a Magistrate or a Gazetted Officer, which option was reduced into writing vide memo Ext.PW5/A. The appellant opted to be searched by Inspector Madan Lal aforesaid. On checking the rucksack, which was carried by the appellant, he found a plastic container, having **Charas** in it, in the shape of chocolate and tablet-form. It was weighed and came out to be 2.00 K.Gs. Out of the recovered quantity, two samples were separated, which were packed and sealed separately with seal impression `H'. Remaining bulk was put in the same plastic container and put into the rucksack and sealed. The Investigating Officer filled in triplicate the NCB forms, one of which is Ext.PW7/A. The seal impression was also taken on a piece of cloth Ext.PW5/C separately. Vide memo Ext.PW5/D, the case property was taken into possession and the seal was handed over to C. Santosh Kumar. A ruqa Ext.PW7/B was prepared and sent through C. Santosh Kumar, for registration of the case, to Police Station Kullu, on the basis of which FIR Ext.PW3/A was formally registered.

The Investigating Officer aforesaid prepared the site plan Ext.PW3/C and recorded statements of the witnesses. The appellant was arrested informing him about the grounds of his arrest. Case property as well as the appellant were produced before the Sub Inspector, Kamla (PW3), who had resealed the case property with her own seal producing the impression of English letter `T'. The case property was deposited with MHC Roop Singh (PW2), in the Malkhana, who made an entry in the relevant register, copy of which is Ext.PW2/A. One of the sample was sent vide RC Ext.PW2/B, through HHC Jai Kishan (PW4), for analysis. The special report Ext.PW1/A was also sent to the Additional Superintendent of Police. On the receipt of the report Ext.PA of the

Chemical Examiner, who found the contents of **Charas** in the said sample, the case was presented for the trial of the appellant in the court.

The appellant was charge-sheeted under Section 20 of Act. He pleaded not guilty and claimed trial. The prosecution examined its witnesses to prove the case and found him guilty of the offence charged. Accordingly, he was convicted and sentenced to undergo Rigorous Imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, to further suffer imprisonment for a period of four years. He was also given the benefit of Section 428 of the Code of Criminal Procedure.

Feeling aggrieved and dissatisfied by the impugned judgment of conviction and sentence, the instant appeal has been filed, on the grounds that there is non-compliance of Section 100(4) of the Code of Criminal Procedure and Section 50 of the Act, further that the case property was neither sealed nor measured and deposited in the Malkhana as per law and there was no endorsement on the Road Certificate regarding receipt of the entry in the laboratory, therefore, the presumption can be drawn that no such sample was sent for the chemical examination.

The matter had appeared repeatedly, for the final hearing in the cause list, but the learned counsel for the appellant did not put in appearance. Therefore, we propose to examine and reappraise the evidence on record, in the light of the grounds taken in the appeal to decide the matter on its merits.

The first ground, which has been taken in the appeal is the non-compliance of Section 100(4) of the Code of Criminal Procedure. In fact the appellant was found having in his possession the contraband at an open place on the road, in his rucksack bag. Therefore, the said provisions of the Code are not attracted.

As far as the non-compliance of Section 50 is concerned, as already stated above, the contraband was found in the rucksack of the appellant. Even though the compliance of Section 50 was not required in the instant case, yet the appellant was apprised of his right to be searched either before a Gazetted Officer or a Magistrate, vide memo Ext.PW5/A, which is thumb marked by him in the presence of the witnesses and this document has been fully proved by PW5 Ranjeet Singh and Inspector Madan Lal (PW7), therefore, the aforesaid plea taken has no merits and is rejected.

Further the conviction is assailed on the ground that neither weights nor the scale were in possession of the police officials, therefore, the alleged contraband was not weighed and no proper seals were affixed. Therefore, there was likelihood of its tampering. This plea does not hold any water in view of the statement of PW7 Inspector Madan Lal. He has categorically stated that the **Charas** after the recovery was weighed and the same was found to be 2.00 K.Gs. After separating the samples, it was properly sealed with seal impression `H'. This fact has not been assailed in his cross-examination. He has also stated that he had taken the samples from the whole matter and the case property was properly sealed. This version is further corroborated by PW5 HC Ranjit Singh. It is worth mentioning that no suggestion was given in his cross-examination that the case property was tampered with or there was any likelihood of its tampering. S.I. Kamla had resealed the case property with her own seal on its production before her and was deposited in the Malkhana with HHC Jai Kishan (PW4). Copy of the reverse side of road certificate Ext.PW1/D clearly indicates the receipt of the sample in the CTL Kandaghat. The same was sent for analysis, through HC Jai Kishan, who was examined as PW4. He clearly stated that he had deposited the sample in the said

laboratory and nobody tampered with it. Even the certificate of the Chemical Analyst on report Ext.PA makes a reference that the sample was received through HC Jai Kishan No.188 (PW) and bore facsimile of the seal impression as was on the NCB forms against Col. No.8 and 9, which was found intact. Therefore, in these circumstances the plea of tampering with the sample is totally over-ruled. The link evidence is found to be complete. Therefore, point raised is rejected.

We have found that the special report Ext.PW1/A was received in the office of Additional Superintendent of Police on 21.1.2004, as stated by PW1 HC Subhash Chand. He produced the Photostat copy of special report Ext.PW1/A with its endorsement Ext.PW1/B. The said report was sent within the statutory period, it was containing all the details. Therefore, there is a compliance of Section 57 of the Act also. The appellant has failed to show any ambiguity and prejudice allegedly caused to him. Thus, on the critical examination of the evidence aforesaid, we have found that the prosecution has been able to establish that aforesaid contraband was recovered from the actual and conscious possession of the appellant.

We have also considered the matter of appellant regarding the sentence, in view of the Division Bench Judgment of this court rendered in Criminal Appeal Nos. 491 & 510 of 2003, decided on 15.5.2007 titled ***Dharam Pal versus State of Himachal Pradesh and another.*** In the aforesaid case, it was held that only the resin content of the stuff is `Charas' in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff. The quantity of the Charas, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-accused is to be held responsible for

possessing `Charas' only to the extent, the stuff contained the resin content in it.

In the present case, applying the ratio of Dharam Paul's case supra, as per the report of the Chemical Examiner, the entire sample of stuff was not resin or say Charas, but only a part of it, to the extent of 34.09 per cent was resin and the Beam's alkaline test was positive. Thus, the appellant is held to be in possession of 680 grams of Charas, which is less than the 'commercial quantity', as specified vide Notification No.S.O.1055(E) dated 19th October, 2001, issued by the Central Government. Therefore, the appellant is liable to be punished not under Section 20 (C) of the Act, as held by the trial court, but under Section 20(B) of the Act, for which no minimum sentence is prescribed. The offence under Section 20(B) of the Act is punishable with imprisonment that may extend to ten years and with fine which may extent to Rs.1,00,000/-.

Looking to the quantity of resin/Charas found in the stuff recovered from the appellant, we feel that the ends of justice would be met in case the sentence of the appellant is reduced from ten years rigorous imprisonment and a fine of Rs.1,00,000/- to five years rigorous imprisonment and a fine of Rs.20,000/- and in default of payment of fine, simple imprisonment for a further period of six months. We order accordingly. The appeal is partly allowed.

Revised warrant of sentence be issued to the Incharge of the jail concerned by the registry of this Court.

The matter is accordingly disposed of.

(Surjit Singh)
Judge.

October 12, 2007.
(PDS)

(Surinder Singh)
Judge.